83-928

No.

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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

SHIRLEY McGAUGHEY, a/k/a
SHIRLEY ZIGORIS and
GUY E. McGAUGHEY, JR. - - - Petitioners

versus

MARK ZIGORIS - - - - - Respondent

On Petition for Writ of Certiorari to the Supreme Court of Kentucky

---

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Counsel of Record for Respondent, Mark Zigoris

December 29, 1983

WESTERFIELD-GOULD CO., 640 S. KENTUCKY-P.O. BOX 6201, LOUISVILLE, KY.

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No. _____

SHIRLEY MCGAUGHEY, a/k/a
SHIRLEY ZIGORIS and
GUY E. MCGAUGHEY, JR. - - - *Petitioners*

v.

MARK ZIGORIS - - - - - *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Respondent, MARK ZIGORIS respectfully requests that this Court deny the petition filed November 29, 1983 requesting that a Writ of Certiorari issue to review the judgment of the Supreme Court of Kentucky entered in the above-styled action on August 31, 1982.

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. §1257(3), seeking a Writ of Certiorari to the Supreme Court of Kentucky to review the de-

cision rendered on May 11, 1983, to decide whether the refusal of the Kentucky Supreme Court to recognize and enforce an Illinois modification of custody with the resultant child support award violates the principles of the full faith and credit clause contained in Article 4 §1 of the United States constitution. This Court lacks jurisdiction to hear this case and the grant of a Writ of Certiorari would be improvident as the issue argued in this Court was not properly raised in the state courts below. This Court has often stated that it will not reexamine the final judgment of a state court unless the record shows "either expressly or by clear implication that the Federal claim was adequately presented in the state system." *Webb* v. *Webb*, 101 S. Ct. 1889, 1892 (1981); *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67 (1928). The parties and the trial court in this action dealt with the case solely as a custody case, governed by the Uniform Child Custody Jurisdiction Act and the argument that the Illinois judgment was simply a money judgment for accrued child support arrearages and that the Uniform Child Custody Jurisdiction Act did not apply was not raised until a Petition for Rehearing was filed by Petitioners following the affirmance of the decision of the trial Court by the Kentucky Court of Appeals.

The Kentucky Supreme Court understood that the case involved the recognition and enforcement of an Illinois custody modification and the application of the Uniform Child Custody Jurisdiction Act. It found that the Petitioners' argument that the modification of custody could be separated from the child support

award was unpersuasive, observing that "it goes without saying that in the absence of custody, support is not granted."

It is clear that where a state court decision rests on adequate and independent states law grounds, this Court should not review the decision. *Radio Station W.O.W., Inc.* v. *Johnson,* 326 U. S. 120 (1945). The decision of the Kentucky Supreme Court in this case was based upon the application of the Uniform Child Custody Jurisdiction Act to the facts of this case. Until the Illinois modification of custody is recognized by the Kentucky courts, Respondent is the custodial parent and when the Kentucky Supreme Court, acting under Kentucky state law, more particularly the Uniform Child Custody Jurisdiction Act, decided that it was not obligated to recognize and enforce the Illinois custody modification, Petitioners' attempt to enter the Illinois judgment as a money judgment was meritless. Without a valid, recognized award of custody in favor of the Petitioners, Kentucky state law does not allow the enforcement of a child support award in favor of a non-custodial parent.

This Court is therefore without jurisdiction to issue a Writ of Certiorari to the Kentucky Supreme Court under 28 U.S.C. §1257(3) on the grounds that the Federal question raised by the Petitioners was not properly presented or preserved for review in the state court and further that the case was decided on independent, adequate state law principles, including the Uniform Child Custody Jurisdiction Act, and not involving the potential Federal questions raised by the Petitioners.

As the decision of the questions raised by the Petitioners was not necessary to the decision of the Kentucky Supreme Court, the Petition for Writ of Certiorari to that Court should be denied.

STATEMENT OF THE CASE

The thirteen page statement filed by the Petitioners is so confusing, distorted and argumentative that it cannot fairly be said to clearly or concisely describe the facts material to consideration of this case. The statement contains allegations that are neither a part of the Record on Appeal nor material to the issues to be decided. The only proof in the Record to which Petitioners can refer in support of their allegations of the existence of emergency jurisdiction in the Illinois courts, is their prior briefs containing the same, unsubstantiated, self-serving, slanderous allegations. There has never been any proof of the existence of an emergency regarding the custody of these children. The allegations made in the Petition have never actually been litigated and no judge in any court has found them to be true, nor has there ever been found to be any justification for the Petitioner's violation of the Orders of the Courts of Indiana, Kentucky and Florida. Statements to the contrary are simply figments of the fertile imagination of the Petitioners. Respondent considers the following to be a clear and concise, chronological summary of the facts and procedural events necessary for a complete understanding of the issues presented by this case.

Shirley McGaughey (Petitioner) and Mark Zigoris (Respondent) were married on May 26, 1963, in Youngstown, Ohio. Three (3) children were born of the marriage, Dean Zigoris, born March 17, 1964, Andre Zigoris, born April 24, 1965, and Alexia Zigoris, born June 3, 1967. The parties were divorced on March 31, 1970, by the Clark County, Indiana, Superior Court in Action No. 69-D-657. A copy of the judgment entered after trial in chief on all issues, including custody, awarding permanent custody of the parties' children to Dr. Zigoris, is attached as Respondent's Exhibit No. 1. The children at that time were ages 6, 5 and 3. Subsequent to the parties' divorce in 1970, both moved to Louisville, Kentucky, where the children continued, of course, to reside with the custodial parent, the Respondent herein. In 1972, Petitioner initiated custody proceedings in Louisville, Kentucky, and after a hearing in chief, a judgment was entered denying that motion, said judgment being attached as Respondent's Exhibit No. 2. At that time, the children were ages 9, 8 and 6 and they continued to live with the Respondent, the custodial parent. They continued living with Dr. Zigoris into 1978 at which time they were ages 14, 13 and 11. In April, 1978, Petitioner (Shirley Zigoris), who had, in the interim, married and moved to Florida, took possession of the children in contravention of the Indiana and Kentucky judgments and initiated proceedings in Florida, requesting a transfer of custody. After a hearing at which Petitioner appeared only by counsel (her new husband) and Respondent appeared in person and with counsel, the Florida court declined

to modify the Indiana decree, granting Dr. Zigoris' request for recognition and enforcement of the Indiana and Kentucky custody decrees and ratifying and affirming the award therein of the custody of the parties' infant children to him. The Florida court found the conduct of the Petitioner contrary to the best interests of the children and to the purposes of the Uniform Child Custody Jurisdiction Act, particularly that portion which states that among the purposes is to "deter abductions and other unilateral removals of children undertaken to obtain custody awards." (See attached final judgment, Brevard County, Florida, Circuit Court, No. 78-1270-CA-01-A, Respondent's Exhibit No. 3).

Shortly prior to the entry of the Florida judgment, Shirley fled from Florida with the children and moved to Illinois where she once again initiated proceedings for a transfer of custody. Respondent was served with summons when in Illinois seeking access to the children. After a hearing, on December 18, 1978, in Petitioner's new husband's hometown, at which the parties were present, with counsel, the Illinois court assumed jurisdiction and granted temporary custody of the children to Petitioner. (R.A., p. 174). On April 22, 1980, the Illinois judge entered an order awarding Petitioner child support in the amount of $800.00 per month per child, retroactive to the date she had taken possession of each child and ordered Respondent to pay hospitalization expenses incurred for Andre and Petitioner's attorney's fee.

Petitioner, having finally found a court that agreed with her position, then petitioned the Jefferson Circuit Court in this action for enforcement of the provisions of the Illinois judgment regarding custody and support. The Jefferson Circuit Court judge heard the testimony and arguments of the parties and interviewed the children and agreed with the Florida court that there was no emergency and that Petitioner had taken both children from Florida to avoid enforcement of the orders of that court and he refused to enforce the Illinois degree, finding that the Illinois court had been without jurisdiction to modify the Indiana judgment, pursuant to Ill. Rev. Stat. Ch. 40 §2109 (KRS 403.470(2)), which provides in pertinent part, that:

> The court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

For this reason, the Jefferson Circuit Court judge held that the Kentucky courts were not obligated to give full faith and credit to the judgment of the Illinois court, transferring custody. From this judgment, Petitioners appealed to the Kentucky Court of Appeals and, on April 16, 1982, that Court affirmed the decision of the Jefferson Circuit Court, holding that KRS 403.-520 did not make recognition and enforcement of the

Illinois modification mandatory and that discretionary enforcement of that judgment would "run contrary to the very purposes for which the Uniform Act was enacted."

> To recognize and enforce the Illinois custody modification with the resultant arrearage order would be violative of the expressed purposes of Kentucky law and would make the courts of this Commonwealth an instrument in encouraging conduct which the legislature has sought to inhibit. Petitioner's Appendix E.

On Motion of the Petitioners, the Kentucky Supreme Court granted discretionary review and on May 11, 1983, affirmed the decision of the Kentucky Court of Appeals. Petitioners now seek review by this Court of that decision.

ARGUMENT

The Petition for a Writ of Certiorari to the Kentucky Supreme Court should be denied as there is adequate and independent support under Kentucky law, for the decision of that Court pretermits the Federal question raised by the Petitioners.

The Uniform Child Custody Jurisdiction Act, first proposed in 1968, requires that a state recognize and enforce foreign custody modifications made under the Uniform Act or under factual circumstances meeting the jurisdictional standards of the Act. Among the purposes of the Act are the following:

(a) to avoid jurisdictional competition and conflict with Courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

* * * * * * *

(e) deter abductions and other unilaterial removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible.

KRS 403.400.

The Uniform Act was adopted in Kentucky on July 15, 1980 (KRS 403.420 - 403.620) and in Illinois on September 11, 1979 (Ill. Rev. Stat. Ch. 40, §§2101-2126). Prior to that time, both states had in effect only the primary jurisdictional section of the Act. (KRS 403.260 and Ill. Rev. Stat. Ch. 40 §601).

KRS 403.520 (§13 of the Uniform Act) provides for the recognition and enforcement of foreign custody decrees by the courts of this state:

> The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with KRS 403.420 to 403.620, or which was made under factual circumstances meeting the jurisdictional standards of KRS 403.420 to 403.-620.

It cannot be said that the Uniform Act was law in Illinois at the time the Illinois decree was rendered

and neither can it be said that the law in Illinois at that time was substantially in accordance with the Uniform Act. (*Compare,* Ill. Rev. Stat. Ch. 40 §601 *with* KRS 403.420 to 403.620). The sole question, thus, is whether the Illinois modification was rendered under factual circumstances meeting the jurisdictional standards of KRS 403.420 to 403.620.

The Jefferson (Kentucky) Circuit Court and the Kentucky Court of Appeals held that had the Illinois Court been applying the standards of jurisdiction found in the Uniform Act, the assumption of jurisdiction by that court would have been improper. KRS 403.470 §8 of the Uniform Act, provides that:

> Unless required in the interest of the child, *the Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody* or has improperly retained the child after a visit or other temporary relinquishment of physical custody . . . (emphasis added).

The Commissioner's note to this section interprets it as a codification of the common law "clean hands" doctrine, making refusal of jurisdiction mandatory "in the case of illegal removal or retention of the child . . . unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct". Petitioners maintain correctly that this section applies only where a court otherwise has jurisdiction to modify a custody decree and further correctly observe that the

Kentucky courts, in this case, do not have jurisdiction to modify the Illinois judgment. However, that is not the relevant inquiry. The question to be decided is whether the jurisdiction of the Illinois court, at the time the judgment sought to be enforced was rendered, was proper under the standards of the Uniform Act. The foregoing section must be applied to the assumption of jurisdiction by the Illinois courts, not the Kentucky courts, and Respondent maintains that even if the assumption of jurisdiction by the Illinois courts was otherwise proper, this section required that court to refuse to exercise it.

The decisions of the Kentucky courts support the finding that the Illinois court lacked subject matter jurisdiction under the Uniform Act to modify the prior custody decrees of Indiana, Kentucky and Florida. In *Freeman* v. *Freeman,* Ky., 547 S. W. 2d 437 (1977), the Kentucky Supreme Court refused to modify a Florida judgment, granting permanent custody to the father where the mother had stolen the children and moved to Kentucky where she hid the children and instituted proceedings for modification. At the time the case was decided, only the primary jurisdictional section of the Uniform Act was in effect in Kentucky and the Court, relying solely on that section and on the policies underlying the Uniform Marriage and Divorce Act, held that the period of time the children were hidden in the state did not have the effect of giving them home state "status" for the purpose of acquiring jurisdiction and further held that:

It is an intolerable state of affairs where self-help and the rule of "seize and run" prevail rather than the orderly processes of law. Until the adoption in this Commonwealth of the Uniform Marriage and Divorce Act, KRS Chapter 403, with particular reference to KRS 403.260, Custody, we had no firm guidelines for determining jurisdiction in child custody proceedings or for the purpose of recognizing and giving effect to the orders of courts of other jurisdictions involving the custody of children. The philosophy of the Act is to stabilize and bring some semblance of order into the determination of child custody proceedings thereby reducing jurisdictional conflict between the various states. We are of the opinion that according to the provisions of the Act, the Florida Court has jurisdiction of custody in this case.

We are of the further opinion the trial court acted properly in giving full faith and credit to the orders of the Florida Court. *Any other disposition by the trial court would have the effect of rewarding the mother for ignoring and attempting to circumvent valid court orders.*

* * * * * * *

Our observation is that the "best interest" of the child has been lost in the thicket of the wishes of the parents here. We can only hope both parents will refrain from "self-help" in the future and rely upon the courts to determine what the parents cannot. The alternative to an orderly judicial process is chaos. Admittedly the system is not perfect; however, it is far better than a series of hide and seek situations which are detrimental to the well-being of any child.

Id. at 440-442.

In *Wood* v. *Graham,* Ky., 633 S. W. 2d 404 (1982), the Kentucky Supreme Court granted a writ of prohibition, prohibiting the judge of the Breathitt (Kentucky) Circuit Court from taking any action regarding custody of the child and ordering the father to return the child to the temporary custodian in a case where the child had lived in Ohio its entire life and was taken from the temporary custodian in Ohio by its father and brought to Kentucky two (2) days prior to the filing of the lawsuit. This Court held that:

> The action of the father in removing the child from Ohio is a classic example of the type of conduct that triggered the enactment of the statute by our General Assembly. As stated in the statute, one of the purposes of the Act is to deter "abduction and other unilateral removals of children." In addition, the statute mandates that a Kentucky court "shall not exercise its jurisdiction to modify a custody decree of another state," if the petitioner has improperly removed the child from its legal custodian. KRS 403.470(2).
>
> *Id.* at 406.

This approach has been applied by several other courts in similar situations under the Uniform Act and these cases serve to reinforce Respondent's position that the Kentucky courts were not bound by KRS 403.520 to recognize and enforce the Illinois decree.

In *In Re Marriage of Hopson,* 110 Cal. App. 3d 884, 168 Cal. Rptr. 345 (1980), a 1976 Arizona divorce decree awarded custody of two (2) children to their mother, providing that neither party was to remove the children from Arizona without the consent of the Court.

In February, 1977, the mother removed the children to California without the permission of the father or the court. In September, 1977, the father moved the Arizona court for a modification of custody and during the pendency of that action, removed the children from California to Tennessee without the knowledge or consent of the mother and began custody proceedings in Tennessee. In January, 1978, Arizona denied the father's motion for a change of custody and ratified the mother's removal of the children to California. In March, 1979, the Tennessee courts assumed jurisdiction and awarded custody of the children to their father. In May of 1979, the mother moved the California courts for enforcement of the January, 1978, Arizona decree and the father moved for recognition and enforcement of the Tenneessee modification. The California court refused to recognize and enforce the Tennessee decree in a lengthy and well-reasoned opinion. California and Arizona, during the pendency of these proceedings, had in effect the Uniform Act. Tenneessee did not. The California court held that subject matter jurisdiction could not be conferred on the Tennessee courts solely by the mother's participation in those proceedings and that the relevant inquiry was whether the order of the Tennessee court was made substantially in accordance with the Uniform Act. After discussing in depth the jurisdictional requirements of the Uniform Act, including the clean hands provision, Section 8, the court could find no justification for the father's kidnapping and concluded that "given the clear purpose and policy of the UCCJA to

deter child-napping, the Tennessee court failed to comport with jurisdictional standards substantially in accordance with the UCCJA". *Id.* at 356.

Regarding the failure of the Tennessee court to follow the procedures outlined in the UCCJA, the California court observed that:

> The fact that Tennessee did not follow procedures that conform substantially with those of the statute is understandable in light of the fact that Tennessee has not adopted the UCCJA. Nevertheless, we are compelled to apply the principles of the UCCJA in determining the validity of the Tennessee order, i.e., the propriety of its exercise of jurisdiction. Substantial evidence indicating a total absence of procedural safeguards in conformity with those established by the UCCJA further supports our conclusion that the Tennessee judgment was not entitled to full faith and credit. *Id.* at 357.

After hearing the testimony and arguments of the parties in this case, the trial judge determined that no emergency existed, that Petitioners' had removed the children to Illinois in violation of the orders of three (3) states and that for these reasons, the assumption of jurisdiction by the Illinois courts was not made under factual circumstances warranting the assumption of jurisdiction under the Uniform Act and the Illinois decree was therefore not entitled to recognition and enforcement by the courts of this state. In fact, the courts of all three (3) states, Indiana, Kentucky and Florida, have heard and not believed Petitioners' arguments that an emergency existed and

that the children would suffer irreparable injury if they did not act.

Thus the decision of the Kentucky Supreme Court is supported by independent, adequate state grounds and the decision of the Federal question raised belatedly by the Petitioners was not necessary to a decision in this case. Without custody, under Kentucky law, there is no basis for an award of child support to the Petitioner. Cf., *Goff* v. *Goff*, Ky., 323 S. W. 2d 209 (1959) (holding that a modification of custody automatically terminates a support award).

The final irony is that this litigation, which has progressed at Petitioners' insistance through the Courts of four states, has effectively denied the children's access to their father for over five years. The real losers in this case are the children, Alexia, now 16, and Andre, now 18, for because of their mother's actions, they have been deprived of their most valuable and supposedly their most inalienable relationship—that being the relationship between a child and his natural parent.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of Kentucky should be denied.

Respectfully submitted,

JOSEPH V. MOBLEY
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710 West Main Street
Louisville, KY 40202
(502) 583-4816
Counsel for Respondent

APPENDIX

RESPONDENT'S EXHIBIT #1

STATE OF INDIANA, CLARK COUNTY, ss:

BE IT KNOWN; That on the 31 day of March, 1970 the same being the _____ judicial day of said year of the Clark Superior Court, of Clark County, Indiana, held at the Court House in the City of Jeffersonville, in said County and State, before the Honorable Warren W. Martin, Jr., Judge of said Court, the following proceedings were had, viz:

MARK ZIGORIS
v.
SHIRLEY ZIGORIS
} No. 69-D-657

Comes now the petitioner in person and by his attorneys, Fifer, Vogt, Hoodenply and Lanum. Comes also the defendant by her attorneys, McDaniel, Forrest, Young and McDaniel.

The Court finds that the defendant was served with summons at least ten days before the date on which the defendant was to appear as shown by the date endorsed on the petition for divorce, stated in the summons when issued and as shown by the endorsement of the Sheriff of Clark County, Indiana, on the return of the summons, which endorsement, summons and return reads as follows:

The Court further finds that more than sixty days have expired from the date of the issuance of the summons which was served on the defendant.

The Court having heard part of the evidence in this cause on March 23, 1970, and having continued this cause until this date, and the court now having concluded hearing the evidence in this cause and being advised in the premises, the court finds:

a) that the petitioner has been a bona fide resident of the State of Indiana for one year previous to the filing of his petition for divorce, and a bona fide resident of Clark County, Indiana, at the time and for six months immediately preceding the filing of his petition for divorce;

b) that the petitioner should be granted an absolute divorce from the defendant;

c) that the best interest of the children requires that their custody be awarded to the petitioner until the further order of this court;

b) that the court makes no determination that the defendant is not a fit and proper person to have the custody and control of the minor children, but that at this time her mental condition dictates that the children be awarded to the petitioner;

e) that the defendant should be granted the right to visit with the parties' minor children at reasonable times;

f) that the following personal property should be set off to the defendant, free and clear of all liens and encumbrances: color television; silver; china, bedroom suite of defendant; Toyota automobile; and all personal wearing apparel, jewelry, etc. of the defendant;

g) that the following personal property should be set off to the petitioner free and clear of all claims of the defendant: all remaining household goods and effects not already in the possession of the defendant and still in the possession of the petitioner, except those set out in f) above; Pontiac automobile; and all personal wearing apparel, etc. of the petitioner;

h) that the petitioner should transfer the title to the Toyota automobile to the defendant as soon as possible; and

i) that the petitioner should pay the defendant the sum of $10.00 per week for a period of 3 months, beginning

April 4, 1970, and ending July 4, 1970. It is therefore ordered:

1. that the petitioner, Mark Zigoris, be, and he is hereby, granted an absolute divorce from the defendant, Shirley Zigoris;

2. that the petitioner be, and he is hereby, awarded the custody of the parties' minor children: Dean Zigoris, age 5 years; Andre Zigoris, age 4 years; and Alexia Zigoris, age 2½ years;

3. that the defendant be granted the right to visit with the parties' minor children at reasonable times;

4. that the following personal property is set off to the defendant, free and clear of all liens and encumbrances: color television; silver; china; bedroom suite of defendant; Toyota automobile; and all personal wearing apparel, jewelry, etc. of the defendant;

5. that the following personal property is set off to the petitioner, free and clear of all claims of the defendant: all remaining household goods and effects not already in the possession of the defendant and still in the possession of the petitioner, except those set out in section 4 above; Pontiac automobile; and all personal wearing apparel, etc. of the petitioner;

6. that the petitioner shall transfer the title to the Toyota automobile to the defendant as soon as possible; and

7. that the petitioner shall pay to the defendant the sum of $10.00 per week for a period of 3 months, beginning April 4, 1970, and ending July 4, 1970. So ordered this 31st day of March, 1970.

(s) Warren W. Martin, Jr.
Clark Superior Court Judge

State of Indiana }
Clark County } ss:

I, John Gelhaus, Clerk of the Clark Superior Court, of Clark County, in the State of Indiana, do hereby certify that the foregoing is a full, true and complete copy of the proceedings had in said Court, in the above entitled cause, on the day and year first aforesaid, as the same appears and remains of record in my office.

In Testimony Whereof, I hereunto subscribe by name and affix the seal of said Court, at my office in the City of Jeffersonville, this 24th day of August, 1971.

(s) John Gelhaus
Clerk of Clark Superior Court of
Clark County, Indiana

RESPONDENT'S EXHIBIT # 2

JEFFERSON CIRCUIT COURT

CHANCERY BRANCH
THIRD DIVISION

No. CR 153,871

SHIRLEY ZIGORIS - - - - - - - *Plaintiff*

v.

MARK ZIGORIS - - - - - - - *Defendant*

JUDGMENT

By a Decree entered March 31, 1970, in the Superior Court of Clark County, Indiana, the parties to this action were divorced and the Defendant, Mark Zigoris, was awarded the custody of the three infant children of the parties.

Subsequent to the divorce both parties moved to Louisville, Kentucky. The children are Dean Zigoris, nine years of age, Andre, eight years of age, and Alexia Zigoris, six years of age.

The Defendant, father, is a professional man in the field of dentistry. According to the proof in the record he is taking very good care of the children and has a mature woman acting as a full-time babysitter and housekeeper for his home. The Plaintiff, mother, in this action is seeking a change of custody and an award of support.

The evidence reveals that this woman has had emotional problems and even though she testified that these problems have been resolved we are not convinced that it would be for the best interest of the children to change their custody.

Since her divorce from Dr. Zigoris she has married and divorced a second husband and according to her testimony she is keeping company with a third man and at this time she doesn't know whether or not she will marry him.

We find no evidence in the testimony of any such change of circumstances of either Plaintiff, the Defendant, or the children as would warrant a change of custody.

According to the evidence Mrs. Zigoris is enjoying liberal visitation privileges with these children and apparently Mrs. Zigoris is on an extremely friendly relationship with both of her ex-husbands and her present gentleman friend and the children and we see no reason to disturb these relationships.

There is nothing in the evidence to testify to the fact that these children would be in her custody for such an extended visitation period as would warrant an award of support for such periods. It very well could be that if Mrs. Zigoris does have visitation privileges with these children for an extended period of time the Court might consider making such an award.

Plaintiff's Complaint is dismissed and the Defendant is allowed his costs.

Dated this 25th day of January, 1973.

(s) Lyndon Schmid, Judge

CC to: Mr. Edwin I. Baer
Mr. Joseph V. Mobley, Jr.

RESPONDENT'S EXHIBIT #3

IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA

Case No. 78-1270-CA-01-A
Case No. 78-1311-CA-01-E-A

MARK ZIGORIS, - - - - - - - *Petitioner,*

v.

SHIRLEY ZIGORIS MCGAUGHEY, f/k/a SHIRLEY ZIGORIS,

AND

SHIRLEY ZIGORIS MCGAUGHEY, f/k/a SHIRLEY ZIGORIS, - - - - - - *Petitioner,*

v.

MARK ZIGORIS, - - - - - - - *Respondent.*

FINAL JUDGMENT

THIS CAUSE having come on for hearing on the Motion for Entry of a Judgment filed by the Petitioner, Mark Zigoris, and appearing at the hearing, Dwight W. Severs, Attorney for Petitioner, and Jack Kirschenbaum, representing Shirley Zigoris McGaughey, and the Court, after hearing the testimony of the Petitioner, Mark Zigoris, and his witnesses and the Court after considering other evidence that was submitted finds:

1. That this Court has jurisdiction over the parties and the subject matter thereof. That the Court has personal jurisdiction over the Respondent by reason of her filing a Petition for Modification of Final Judgment and appearance by counsel in this cause.

2. That on April 11, 1978, the Petitioner filed, in Civil Action No. 78-1270-CA-01-A a certified copy of the Judgment entered by the Jefferson County Circuit Court, Louisville, Kentucky; said Judgment being filed in accordance with Florida Statutes, Chapter 61.1332.

3. That on or about April 13, 1978, the Respondent, Shirley Zigoris McGaughey, filed a Petition for Modification of a Foreign Decree requesting a change of custody for the minor children, Andre Zigoris and Alexia Zigoris; said action being filed in Civil Action No. 78-1311-CA-01-E.

4. That on May 4, 1978, Petitioner, Mark Zigoris, filed a Petition for Recognition and Enforcement of a Custody Decree of Another State.

5. That on the 10th day of May, 1978, an Order was entered by this Court consolidating Civil Action Nos. 78-1270-CA-01-A and 78-1311-CA-01-E.

6. That on the 10th day of May, 1978, a hearing was scheduled before the Court on the Petition of Mark Zigoris for recognition and Enforcement of Custody Decree of Another State. At the hearing, Respondent, Shirley Zigoris McGaughey failed to appear, and appearing on her behalf was attorney, Curtis Mosley and Guy McGaughey, Husband of Shirley Zigoris McGaughey. During the hearing it was learned that the Respondent, Shirley Zigoris McGaughey had left with the minor child, Alexia Zigoris and did not intend to produce the minor child, Alexia Zigoris nor did she intend to abide by the previous Custody Decrees of the State of Indiana and the State of Kentucky. As a result of said hearing, this Court entered an Order directing the Sheriff of Brevard County, Florida and the Sheriffs of the State of Florida, to take the minor child, Alexia Zigoris, into custody and deliver the minor child to Mark Zigoris.

7. That at the hearing before this Court, on June 26, 1978, the evidence showed:

(a) That the Petitioner, Mark Zigoris, is presently entitled to enforcement and recognition in Florida of the Indiana and Kentucky Decrees.

(b) That a Judgment has previously been entered on March 31, 1970, by Warren W. Martin, Judge of the Clark Superior Court, Jeffersonville, Indiana, awarding, Mark Zigoris, custody of the three (3) minor children; that a Judgment was entered on January 25, 1973, by Lyndon Schmid, Judge of the Jefferson County Circuit Court, Louisville, Kentucky, denying the Petition for Modification filed by the Respondent, Shirley Zigoris McGaughey, and reaffirming custody in the Petitioner, Mark Zigoris. The Indiana Decree and the Kentucky Decree were entered under factual circumstances meeting the jurisdictional standards of the Uniform Child Custody Act. That in accordance with Florida Statutes 61.1328 and 61.1332, that said Judgment is entitled to full faith, credit and recognition and enforcement in the state of Florida.

(c) That approximately five (5) years prior to March 19, 1978, Dean Zigoris and Alexia Zigoris have resided with their father, Mark Zigoris in Jeffersonville, Ind. That the minor child, Andre Zigoris has resided with Mark Zigoris for the previous five (5) years except since November, 1977 when the parties agreed that Andre Zigoris could reside with his mothrer, who lived in Jeffersonville, Ind.

(d) That during the earlier part of March, 1978, the Respondent, Shirley Zigoris McGaughey and her husband, Guy McGaughey, moved to the state of Florida and rented an apartment at 5801 North Atlantic Blvd., Apartment 709, Cape Canaveral, Florida. That on or about March 19, 1978, pursuant to an agreed visitation, Mark Zigoris arranged for the minor children, Dean Zigoris and Alexia

Zigoris to visit with their mother in the state of Florida. That the minor children, Dean Zigoris and Alexia Zigoris, were to return on March 28, 1978. That the minor child, Andre Zigoris had been visiting Mrs. McGaughey, pursuant to an agreement between the parties. That on or about March 28, 1978, the minor child, Dean Zigoris returned to the Petitioner, Mark Zigoris in the state of Indiana, but the Respondent failed and refused to return the minor child, Alexia Zigoris. That the Petitioner, Mark Zigoris, attempted to contact the Respondent and the minor child Alexia Zigoris, but the telephone number of the apartment in Florida had been changed and the new number unlisted. That Mark Zigoris contacted the Brevard County Sheriff's Department and another individual requesting their assistance in locating the minor child, Alexia Zigoris. That on March 28, 1978, the Petitioner flew from the state of Indiana to Brevard County, Florida, and upon arriving at the residence of Guy McGaughey, learned that the parties had just left approximately two (2) hours earlier. That between March 28, 1978, and April 10, 1978, despite the efforts of Petitioner to locate Alexia Zigoris, Petitioner was unable to locate her. That on April 10, 1978, Petitioner learned that the minor child was in Brevard County, Florida, and on April 11, 1978, filed a certified copy of the Kentucky Decree with the Clerk of the Circuit Court, Brevard County, Florida. That on or about April 13, 1978, Mark Zigoris, pursuant to the earlier Court Decrees, arranged for the minor child, Alexia Zigoris, to be picked up and taken back to the state of Indiana, with the assistance of the Brevard County Sheriff's Department. That after returning the minor child Alexia Zigoris to the state of Indiana, on April 20, 1978, without permission or consent of the Petitioner, Mark Zigoris, Respondent, Shirley Zigoris McGaughey, removed the minor child, Alexia Zigoris, from the school that Alexia was attending

and returned the minor child to the state of Florida. That no Court Orders were in effect authorizing Respondent to have custody of Alexia Zigoris. On April 22, 1978, Shirley Zigoris McGaughey threatened that she would remove the minor child, Alexia Zigoris, from the continental United States in the event Petitioner, Mark Zigoris did not give custody to the Respondent.

(e) That on May 10, 1978, a hearing was scheduled before this Court on the Petition of Mark Zigoris for Recognition and Enforcement of the Indiana and Kentucky Decrees. That at the hearing, it was learned that the Respondent, Shirley Zigoris McGaughey, even though represented by counsel at the hearing, had left the aforementioned apartment earlier in that day, and had gone into hiding, and her husband, Guy McGaughey stated that he was unaware of her location. That from May 10, 1978 until the hearing before this Court, on June 26, 1978, the petitioner through the employment of a private investigator, and with the efforts of the Brevard County Sheriff's Department has not been able to locate the minor child, Alexia Zigoris, despite an Order being entered on May 10, 1978 directing the Sheriffs of the State of Florida to take Alexia Zigoris into custody, and delivering the minor child to Mark Zigoris. The Respondent, Shirley Zigoris McGaughey has failed and refused to abide by this Court's Order dated May 10, 1978, which directed that the minor child, Alexia Zigoris be returned to the Petitioner, Mark Zigoris.

(f) That the evidence showed that the Respondent, Shirley Zigoris McGaughey had a meeting with Petitioner, Mark Zigoris, approximately ten (10) days prior to June 26, 1978. At the meeting she indicated that the Petitioner would not see the minor child, Alexia Zigoris and that the Respondent, Shirley Zigoris McGaughey intended to engage in a custody battle concerning Alexia Zigoris at some point

in time in the future at some other location when she considered her timing to be appropriate and her location appropriate. In addition, she was aware that the financial expense incurred by the Petitioner was substantial and that she intended to financially exhaust, Mark Zigoris, in his efforts to regain custody.

(g) That from May 10, 1978 until approximately June 5, 1978, the minor child, Andre Zigoris resided at the apartment in Cape Canaveral, Florida without the supervision of Shirley Zigoris McGaughey. That during that period of time the child was left alone except for a neighbor looking in on him. That the conduct of leaving Andre Zigoris alone and not under parental supervision is contrary to the best interest of the minor child and Mark Zigoris is entitled to have custody of Andre Zigoris reaffirmed in his custody.

(h) That the evidence showed that a hearing was held before this Court on June 5, 1978 for the purpose of entering a Restraining Order prohibiting Andre Zigoris from being removed from the jurisdiction of this Court. That on June 5, 1978, approximately three (3) days prior to school being dismissed for the school year 1977-1978, Andre Zigoris, was taken out of school and left the state of Florida.

(i) That the evidence showed that as it related to the issue of custody of Alexia Zigoris and Andre Zigoris that each child was taken from the state to avoid enforcement of the Orders of this Court.

8. That this Court finds that the aforementioned conduct by the Respondent, Shirley Zigoris McGaughey, is contrary to the best interest of the minor children, Alexia Zigoris and Andre Zigoris and that said conduct, if it continues, should deprive the Respondent, Shirley Zigoris McGaughey, of further visitation with the minor children in the event the conduct continues by refusing to return

the minor children to the Petitioner who is entitled to custody. That in addition, the Court finds that the conduct of the Respondent Shirley Zigoris McGaughey is contrary to the purposes of the Uniform Child Custody Act, as adopted by the state of Florida, and particularly that portion of the Act contained in Florida Statutes 61.1304 which states as some of its purposes to:

> "deter abductions and other unilateral removals of children undertaken to obtain custody awards."

9. That based upon the aforementioned findings and evidence submitted, it is

ORDERED and ADJUDGED as follows:

1. That Petitioner's Request for Recognition and Enforcement of that certain Judgment entered on March 31, 1970, by Warren W. Martin, Judge of the Clark Superior Court, Jeffersonville, Ind., Action No. 69-D-657, and that certain Judgment entered on January 25, 1973 by Lyndon Schmid, Judge of the Jefferson County Circuit Court, Louisville, Kentucky, Action No. 153871, that awarded custody of the minor children, Dean Zigoris, Andre Zigoris and Alexia Zigoris, to Mark Zigoris, is hereby granted. The aforementioned Judgments and Decrees are hereby established as Florida Judgments and are entitled to recognition and enforcement as Florida Judgments and Decrees.

2. The award of custody to Petitioner, Mark Zigoris, in the aforementioned Decrees, is hereby ratified and affirmed and the Petitioner, Mark Zigoris, is hereby awarded custody of the minor children, Dean Zigoris, Andre Zigoris, and Alexia Zigoris.

3. That the Sheriffs of the State of Florida are hereby directed to take Dean Zigoris, Andre Zigoris and Alexia Zigoris, if they can be found in the State of Florida, and to

physically deliver said minor children to Petitioner, Mark Zigoris.

4. That the request of the Petitioner, Mark Zigoris, for reimbursement of attorney's fees and costs, pursuant to Florida Statutes 61.1332 is hereby granted and the Respondent, Shirley Zigoris McGaughey, is hereby Ordered and directed to pay to Mark Zigoris, the sum of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00) as a contribution towards the attorneys' fees of Mark Zigoris; the sum of Seven Hundred Sixty Three and 66/100 Dollars ($763.66) as travel expenses and the sum of Two Thousand One Hundred Forty Five and 03/100 Dollars ($2,145.03) as Court costs and investigators costs. That a Judgment is hereby entered against, Shirley Zigoris McGaughey in the amount of Five Thousand Four Hundred Eight and 69/100 Dollars ($5,408.69) in favor of Petitioner, Mark Zigoris for which let execution issue. That the previous Orders of this Court of attorneys' fees for failure to permit discovery are ratified and confirmed.

DONE AND ORDERED in Chambers at Rockledge, Brevard County, Florida this 14th day of July, 1978.

(s) Roger H. Dykes
Circuit Judge

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